GLENN H. BRACKEN

IBLA 73-280 September 7, 1973

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM 17811.

Reversed and remanded.

Oil and Gas Leases: Applications: Generally ! ! Oil and Gas Leases: Rentals ! ! Regulations: Generally

An oil and gas lease offer filed under the simultaneous filing procedure in 43 CFR Subpart 3112, accompanied with a private, commercial money order for advance rental payment which is returned by an intermediary bank as uncollectible as a cash item because the money order did not bear the MICR transit number ! routing symbol of the payor bank as prescribed by the American Banking Association, was improperly rejected for noncompliance with the regulation's remittance requirement.

Oil and Gas Leases: Applications: Generally ! ! Oil and Gas Leases: Rentals ! ! Accounts: Payments

Where a Department regulation with respect to oil and gas leases filed under the simultaneous filing procedure in 43 CFR 3112 requires that the advance rental payment accompany the application, an error by an intermediary bank in failing to negotiate a valid money order representing the advance rental payment is not a proper basis for rejecting the applicant's offer.

APPEARANCES: Glenn H. Bracken, pro se.

OPINION BY MR. RITVO

Glenn H. Bracken has appealed from a decision by the New Mexico State Office, Bureau of Land Management, rejecting an offer filed under the simultaneous filing procedure in 43 CFR 3112, for failure to comply with § 3112.2-1(a)(2) requiring that the first year's advance rental payment be made by a "guaranteed" remittance.

Appellant's offer, which was drawn first in a drawing held on January 4, 1973, was accompanied with a money order for payment of the first year's advance rental. The money order was subsequently returned to the State Office by the Federal Reserve Bank of Dallas. The bank gave the following reason for not paying on the money order:

> This check is returned without presentation. We cannot handle it as a cash item because it does not bear the MICR transit number ! routing symbol of the payor bank as prescribed by the American Banking Association. FEDERAL RESERVE BANK OF DALLAS TR. 407.

The maker of the money order was a private firm, Nelson & Nelson of Seguin, Texas. The money order was payable at the First National Bank of Seguin, Texas. This information is on the face of the instrument. The money order was never presented to the bank on which it was drawn for payment.

Appellant argues the money order was good at all times and would have been honored by the payor bank. This allegation has been corroborated by the bank in a letter which states:

> The check is good, and was good at the time, for many times the amount. We have never in the twenty ! five years of dealing with Mr. Sherman Nelson, who owns Nelson & Nelson, had any check or money order returned by us on his account.
>
> We would very much hope the item would be sent directly to us, and I assure it will be paid on sight as all these items are paid.
>
> BENTON DONEGAN, First Vice President.

In addition to the above assurance from the First National Bank, we have discovered upon further inquiry to the Division of Banking for the State of Texas, that Nelson & Nelson, the maker of the money

order, is authorized by the state to issue money orders and that guarantee of payment on their money orders is secured by a bond held by the state.

This appeal is concerned with the interpretation of 43 CFR 3112.2-1(a)(2), which provides in pertinent part:

> The entry card must be accompanied by separate remittances covering the filing fee of $ 10 and the first year's advance rental. The advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check. (Emphasis added.)

The question to be resolved is whether appellant's money order accompanying his application met the requirements of the above regulation.

In the case of Georgette B. Lee, 3 IBLA 272 (1971), this Board considered a situation wherein appellant protested a successful drawee's offer in a simultaneous filing. The appellant had challenged the adequacy of the applicant's corporate money order used for the advance rental payment. We held that such a money order was an acceptable remittance within the meaning of the term "money order" as used in the regulation.

We took the opportunity in that appeal to discuss what types of money orders were acceptable under the regulation. Initially we noted that the regulation was changed to its present form in 1960 in an effort to provide guaranteed remittances for the advance rental payments so as to enhance the orderly and expeditious administration of the Mineral Leasing Act. 30 U.S.C. §§ 181 et seq. (1964). See James W. McDade, 2 IBLA 373 (1971). The intent of the regulation was to secure this orderly administration by limiting remittances of advance rentals to those forms which would guarantee payment unconditionally.

We went on to state:

> The regulation in question does not clearly require any specific form of money order as an acceptable remittance for advance rental payments. We must recognize the fact that there are several forms of money orders generally used by the public and accepted in common financial transactions. "Money Order" is defined in the most recent edition of Webster's Seventh New Collegiate

> Dictionary (1970) [1/] as "an order issued by a Post Office, bank, or telegraph office for payment of a specified sum of money at another office." in addition we note that the public is in the habit of accepting and negotiating money orders from drug stores, large department stores, and other money order companies in the course of day to day routine commercial transactions.

The Board has determined that any money order meeting commercially acceptable standards will satisfy the requirements of the regulation. The question then becomes whether a private, commercial money order which does not bear the American Banking Association MICR transit number ! routing symbol meets these standards.

Upon inquiry to the American Banking Association's offices in Washington, D.C., we were informed that the use of the MICR code system is a rule recommended by the Association to its members as an aid in facilitating the transferability of negotiable instruments. The term MICR stands for Magnetic Ink Character Recognition. It is the numerical symbol commonly found on the bottom of bank drafts and its function is to identify by code number the bank upon which the draft is drawn. The Association merely encourages, but does not require, use of the symbol.

Furthermore, the usage of the symbol is not required by Texas state law. Standing alone, the rule does not have the force of law behind it. 10 Am. Jur. 2d Banks, § 839; see Hamilton National Bank of Chattanooga v. Swarford, 213 Tenn. 545, 376 S.W.2d 470 (1964).

The result is that neither everyday commercially acceptable standards, American Banking Association rules nor relevant state law require that this code symbol be incorporated in private, commercial money order transactions. In addition, the regulation in issue does not clearly specify, qualify or limit itself to any particular type or form of money order. The regulation simply requires that a specific form of remittance accompany the application. See Chester F. Merriman, A-30033 (March 23, 1964).

Despite the fact that the symbol is not explicitly required by law or custom, it is still worth noting the effect that nonrequirement will have upon the simultaneous filing procedure.

1/ The current 1973 edition has the identical wording.

An officer of the American Banking Association informed the Board that when a negotiable instrument does not have a MICR symbol, a member bank will not negotiate it as a cash item. That is, the deposited note will not be immediately credited to the depositor's account. Instead, the bank will normally handle the item as a collectable note. The depositor's account will not be credited until the note has cleared the bank upon which it is drawn.

We were further informed that on occasion a teller will fail to notice that a deposited note does not have the MICR symbol and will deposit the item along with other cash items. When this occurs, normal clearing house procedures will prevent the note from passing through as a cash item and the note will be returned to the depositor as an uncollectible cash item. The depositor must then resubmit the note as a collectable item.

It appears that a bank error, as described above, occurred in this case. We have been informed by the New Mexico State Office, Bureau of Land Management, that past lease offers which were accompanied by Nelson & Nelson money orders similarly drawn, were passed through the intermediary bank and were presented to the payor bank without incident. This Board has held in the past that a rental payment tendered before, but erroneously dishonored by the drawee bank after the pertinent date will be held to have been paid within the prescribed time. Frederick R. Allen, 10 IBLA 361 (1973); Duncan Miller, 70 I.D. 113 (1963). The principle that a banking error should not affect the validity of an applicant's offer applies with equal force in a case where it is the intermediary bank that had made the error.

The fact that appellant's money order was returned as an uncollectible cash item by the Dallas Federal Reserve Bank did not render the note an improper form of remittance. Transfer to the payor bank as a collectable item would have secured payment. As indicated above, the payor bank was at all times willing to honor the money order, in addition to which, the maker of the money order was bonded with the State of Texas to further assure payment. Given these facts, the Board has determined that appellant's money order met the regulation's requirements for a remittance.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for further proceedings consistent herewith.

Martin Ritvo
Member

We concur:

Edward W. Stuebing
Member

Douglas E. Henriques
Member